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1 UNITED STATES DISTRICT COURT
2 SOUTHERN DISTRICT OF NEW YORK

3 UNITED STATES OF AMERICA,

4 v.

17 Cr. 548 (JMF)

5 JOSHUA ADAM SCHULTE,

6 Defendant.

Conference

7 -----x
8 New York, N.Y.
November 7, 2022
9 11:15 a.m.

10 Before:

11 HON. JESSE M. FURMAN,

District Judge

12 APPEARANCES

13 DAMIAN WILLIAMS

14 United States Attorney for the
Southern District of New York

15 DAVID DENTON, JR.

MICHAEL D. LOCKARD

16 Assistant United States Attorneys

17 JOSHUA ADAM SCHULTE, Defendant *Pro Se*

18 SABRINA P. SHROFF

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19 Standby Attorneys for Defendant

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(In open court; case called)

THE DEPUTY CLERK: Counsel, please state your name for the record.

MR. DENTON: Good morning, your Honor. David Denton and Michael Lockard for the government.

THE COURT: Good morning.

MS. SHROFF: Good morning, your Honor. Sabrina Shroff, on behalf of Mr. Schulte, on the matter that he is not *pro se* on.

MR. DE CASTRO: Good morning, your Honor. Cesar de Castro on that same matter.

THE COURT: Good morning to all of you. And Mr. Schulte is present, I would note as well.

So a couple of issues on the agenda. I guess the primary one being the letters that I received from Mr. Schulte expressing concerns with respect to counsel and a desire for a speedier trial.

Ms. Shroff or Mr. De Castro, I don't know if you wish to be heard on those issues, if anything has changed since I received the letters from Mr. Schulte, what your thoughts are.

MS. SHROFF: May I, your Honor?

THE COURT: Yes.

MS. SHROFF: Thank you.

Subsequent to Mr. Schulte's writing to the Court, Mr. De Castro and I met with him, including today, just so that Mr.

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1 Schulte's position is properly preserved.

2 The issues on the Rule 29 and 33 are impacting how he
3 is perceiving the severed counts that are now before this Court
4 and scheduled for a September trial.

5 THE COURT: Can you explain that? If that does not
6 involve divulging confidential communications, I don't
7 understand what the connection is.

8 MS. SHROFF: Your Honor, in deciding whether or not
9 the September trial date is a tenable trial date for him and
10 whether it should be moved up, part of the problem for him will
11 be how and when he will be able to get his Rule 29 and 33 into
12 place, when the Court would rule on it, after the Court rules
13 on it, whether he would still be able to proceed to sentence on
14 the convicted counts or whether he would still have to wait for
15 sentencing on the convicted counts while he awaits trial on the
16 severed counts.

17 So for Mr. Schulte, and if I just may, I know he is
18 *pro se* on this issue but perhaps he would let me speak so that
19 I can lay this out for the Court, despite the Court's orders
20 and the many efforts, almost all of which have been
21 unsuccessful to date, Mr. Schulte has not received a working
22 typewriter, he has not received his 3500 material from the
23 trial, he has not received the trial transcript, and he has
24 absolutely no discovery available to him at the MDC.

25 Mr. Schulte was told on Friday that he had access now

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1 to a typewriter but that the typewriter was broken and was not
2 in a usable -- it was not usable. I did not know of this on
3 Friday because, although I went to MDC on Friday, another
4 defendant on the 84 Unit was having a meeting and they did not
5 have availability because there is only one room for them to
6 meet with Mr. Schulte.

7 I will tell the Court that I personally, myself, with
8 my own two hands, twice have dropped off into the legal mailbox
9 at the MDC paperwork for Mr. Schulte, which he has to date not
10 received. The government says that they sent him his
11 discovery, the UPS lost it, and he still does not have it.

12 The bottom line is, for whatever reason, whether it's
13 our fault, MDC's fault, Mr. Schulte to date has none of those
14 items. So it definitively adds to the stress and frustration
15 of a person being in solitary confinement. I do not know fully
16 how that impacts and what he wishes to do in terms of the trial
17 date that has already been set, but legal research tells me
18 that I have no way to undo a waiver previously entered. But I
19 am sure that the government would be open to an earlier trial
20 date if Mr. Schulte and his legal team were ready for an
21 earlier trial date.

22 If the Court wanted to inquire into that, may I please
23 ask that the inquiry be *ex parte* so we can lay out why,
24 regardless of the schedule, that might be untenable?

25 THE COURT: That might be untenable?

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1 MS. SHROFF: Yes, your Honor.

2 THE COURT: And what is the "that" in that sentence,
3 advancing the trial?

4 MS. SHROFF: Right.

5 THE COURT: OK. Before we get there, can you just
6 explain -- I certainly understand why emotionally there might
7 be a connection between the disposition of the Rule 29 and Rule
8 33 motion and the new trial, but legally what is the
9 relationship between those two? In other words, what does the
10 schedule for those motions, let alone when I decide them, have
11 anything to do with when we go to trial on the severed counts?

12 MS. SHROFF: Depending on how the ruling on the Rule
13 29 and Rule 33, it might impact how Mr. Schulte decides to
14 proceed on the severed counts. Perhaps a ruling might make him
15 want to explore a plea, perhaps not. He may want to change his
16 mind and explore a different tactic with the government,
17 depending on how the Rule 29 and Rule 33 is decided. I don't
18 have a statute or a federal law upon which I would make that
19 association, but certainly it might inform how he proceeds on
20 the severed counts.

21 THE COURT: OK. So the upshot is? I am sort of
22 confused where this all leads us.

23 MS. SHROFF: So the upshot is this, your Honor. Mr.
24 Schulte would like to renew, for the Court's consideration, why
25 he should have access, first to what the Court has already said

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1 he should have access to. So his 3500 material, the trial
2 transcripts, the trial exhibits, and most importantly, the
3 final working drafts of his work product that are on the laptop
4 that was seized. So Mr. Schulte needs access to that. He has
5 notes in his laptop about the 29 and 33. He has marked-up
6 transcripts in there. And he has a draft of the 29 and 33.

7 So at bare minimum, those are the things he needs
8 immediate access to.

9 THE COURT: And I was under the impression until this
10 morning that those were all sent to him, or many of those had
11 been sent to him. So I am distressed to hear that they had not
12 arrived even if they were sent. So we will discuss that.

13 You said at a minimum. Was there something beyond
14 that?

15 MS. SHROFF: So then the next step, your Honor, and I
16 know the Court has ruled and I raise this with some
17 trepidation, Mr. Schulte would renew his request to have a
18 laptop on which to work on the Rule 29 and 33, and with the
19 Court's permission, I think he would like to address that
20 directly with the Court.

21 THE COURT: I think that is very unlikely to be
22 granted, but Mr. Schulte, do you wish to be heard on that?

23 THE DEFENDANT: Yes. And just to be clear, it doesn't
24 necessarily have to be a laptop, although that would be the
25 preferred method. But I think some of the issues I just want

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1 to note for the Court that are untenable. One of them is the
2 exhibits from the government, from the trial, something like 30
3 percent of those exhibits cannot be reviewed on the discovery
4 computer at the MDC, for the reasons that the MDC has already
5 stated, which is that they don't allow those applications to be
6 installed.

7 The other issue is the work product. The government
8 has said that they will not produce or not allow me to obtain
9 my work product from the laptop, and that work product is also
10 in file formats that is not workable work on that MDC computer.

11 And one of the issues to raise, as she was talking
12 about with respect to the pending trial, is that the discovery
13 for that case, 99 percent of that discovery cannot be reviewed
14 on the MDC computer, which was the reason for the laptop to
15 begin with.

16 I also want to note for the Court, in case it hasn't
17 already been, that they haven't turned over the affidavits for
18 the initial search warrant that is pending now, Rule 41 or soon
19 to be pending Rule 41(g) motion as to that. But the other
20 issue is that the government has stated that they will not tell
21 us or inform the defense as to what files or what the file name
22 is of the files that they claim to contain CP, and we believe
23 is a violation of the wall team since the wall team informed
24 the government of that information.

25 So those are just some of the issues outstanding with

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1 the Rule 29 and 33. So like I said, if the government doesn't
2 want to provide a laptop, I think that there is also, you know,
3 a law of the case kind of issue with this, because this was
4 brought up before Crotty and the government said he shouldn't
5 be allowed to use the laptop, he should be required to use a
6 typewriter, and the court came back and said, if the government
7 can use the computer, then I can use it to draft motions as
8 well.

9 I think the point is, especially if the government is
10 going to make claims or allegations as to why they won't
11 provide a laptop, then I should at least have a right to review
12 what files they claim to be CP, or in the case that there is no
13 laptop that would be provided to me, some other mechanism where
14 I can use some kind of computer. I think they have said in
15 e-mails something about setting up something at the court, but
16 they want to monitor me, or some way for me to be able actually
17 access these files and actually be able to at least file this
18 motion.

19 THE COURT: A few things.

20 First of all, law of the case is irrelevant. It's a
21 discretionary doctrine, to the extent that it even applies
22 here, and the circumstances have changed. Unless the entirety
23 of recent events turns out to be a massive misunderstanding and
24 there is no issue and there was no child pornography on the
25 computer, and other things that seem to have been done with the

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1 computer turn out to be innocent conduct rather than what they
2 appeared to be, I assure you, you are not getting any laptop,
3 full stop. That was above and beyond what you are entitled to.
4 It was appropriate before the last trial. Judge Crotty came to
5 that conclusion. I agreed with it. I certainly wasn't going
6 to undo his ruling. But circumstances have changed. You now
7 have been convicted at that trial, and more significantly,
8 there is certainly probable cause to believe that you have
9 mishandled and misused the computer and done so in fairly
10 disturbing and problematic ways.

11 So, again, unless the circumstances change materially
12 back in your favor, there is no laptop in your future. So you
13 should understand that. The government has not made an
14 application to me to strip you -- not made a motion to argue
15 that you have forfeited your right to proceed *pro se*.
16 Candidly, given the record here, there might be an argument to
17 be made there, but they haven't. All they have done right now
18 is say they are not willing to give you a laptop, and I am not
19 willing to override them on that.

20 So you have a typewriter available to you. I will
21 certainly take steps to make sure that you have a working
22 typewriter if that is an issue. It's the first time I have
23 heard that issue. I will take steps to address that. And to
24 the extent that you need other materials, within reason, and
25 certainly consistent with the security issues that are quite

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1 clear here, I will try to ensure that you have whatever you
2 need to prepare those motions. If that isn't enough in your
3 view, you have the option to use counsel. You don't have to
4 proceed *pro se*. Proceeding *pro se*, as you were advised by
5 Judge Crotty, as I advised you, as I ruled in connection with
6 several pretrial motions, does not entitle you to resources
7 above and beyond what you would be entitled to as a prisoner
8 without proceeding *pro se*. So you should understand that and
9 you can make an informed choice. If you decide that the
10 resources available to you are not sufficient for you to make
11 the motions that you wish to make, you can always reconsider,
12 and I would be happy to let you have lawyers for purposes of
13 making those motions.

14 Having said that, Mr. Denton, Mr. Lockard, I don't
15 know if you can shed any light on the whereabouts of the things
16 that were allegedly sent to Mr. Schulte. I don't know why they
17 haven't arrived there. I sort of assumed they had given that I
18 was told weeks ago that they had been sent. I am happy to take
19 matters into my own hands and get in touch with the MDC once
20 again, but can you tell me what is going on here?

21 MR. DENTON: Yes, your Honor. It seems like there's
22 two separate issues.

23 With respect to the material that we sent to Mr.
24 Schulte in the early part of October, it seems to be lost in
25 postal service limbo. This is not the MDC's fault. It just

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1 never made it there. Once we figured that out, we sent another
2 set last week, which looks like it is not there yet but should
3 be there, hopefully in the next day or so, and we will
4 certainly stay on top of that.

5 THE COURT: What is in that package? Is that 3500
6 material?

7 MR. DENTON: Exhibits and trial transcripts.

8 THE COURT: OK. What about, Mr. Schulte mentioned
9 that there was some exhibits that require a computer to be
10 viewed or reviewed.

11 MR. DENTON: I don't think that's right, your Honor.
12 I think all of the exhibits that were used at trial are
13 essentially in PDF form, because that's the format we have to
14 use to display them. The original underlying materials may
15 have been sort of digital forensic files of various kinds, but
16 as used at trial, as offered and admitted, they were, if not
17 exclusively, overwhelmingly in that form and everything else
18 was such that it could be done on a laptop in the courtroom.
19 It didn't require anything particularly sophisticated.

20 THE COURT: Keep going.

21 MR. DENTON: With respect to the materials that Ms.
22 Shroff referenced that were provided directly to the MDC, this
23 is the first we are hearing that those were not received, but
24 we are certainly happy to follow up and see if there is any
25 light that can be shed on that.

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1 Likewise, with respect to the typewriter, we had been
2 advised that that was made available to Mr. Schulte quite some
3 time ago, I think when we first made the representation to the
4 Court, and that he simply had to request to use it and had not
5 done so. Again, having one that is broken, we are happy to
6 also follow up on our end as well and make sure that there is a
7 working one available to him.

8 THE COURT: OK. Do you want to share what can be
9 shared in this setting with respect to where things stand on
10 the laptop front and the search?

11 MR. DENTON: Sure, your Honor.

12 With respect to the laptop, again, we are in a little
13 bit of an odd posture because of the wall team. Our
14 understanding is that the wall team has completed its review of
15 a substantial tranche of the materials and is conferring with
16 an AUSA from our office who has been assigned to provide
17 guidance on that. I hope that is a harbinger of a disclosure,
18 as required by the warrant, to defense counsel in the near
19 future of what has been identified as non-privileged.

20 Separately, there is an ongoing more technical review,
21 primarily focused on the child sexual abuse materials warrant,
22 to not only identify those files, but also identify related
23 metadata pertaining to the defendant's access of those files.
24 That's something that we have discussed a little more
25 concretely because that warrant allowed information about those

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1 files to be shared directly with the prosecution team once it
2 was identified as such. And I think we are moving quickly on
3 that because we realize that what, if anything, is done with
4 that material may have an impact on ongoing proceedings related
5 to the pending charges so we are moving with all due speed on
6 that issue.

7 THE COURT: Do you have any estimate of a time frame
8 for either of those things running their course or no?

9 MR. DENTON: So my understanding, your Honor, is that
10 it's a little bit difficult to tell because part of what they
11 are doing is looking at some of the unallocated space on the
12 laptop, and so figuring out what is there and carving it to
13 make sense of it. It's not a sort of press play and it runs at
14 a consistent speed; it sort of depends on what's there. We are
15 meeting with them again this week to follow up on that and just
16 sort of stay on top of the issue as best we can.

17 THE COURT: Then on a couple of other issues that I
18 think Ms. Shroff and/or Mr. Schulte mentioned.

19 First, to the extent that there is work product on the
20 laptop that the defendant would like in connection with his
21 preparation of motions -- that is, marked-up copies of the
22 transcripts, notes, drafts, anything of that sort -- I take it
23 that's not in the materials that you have sent to the
24 defendant. Can you confirm that, and if that's correct, can
25 you tell me your views on providing it to him, if there is a

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1 means to do that consistent with the security issues as you see
2 them?

3 MR. DENTON: That is correct, your Honor, that is not
4 part of what we have sent to Mr. Schulte. Certainly, Mr.
5 Lockard and I and the other members of the prosecution team
6 have no interest in that other than the fact that the child
7 sexual abuse materials being found was what was on the laptop.
8 None of that has been extracted. The FBI is currently handling
9 the entire laptop consistent with the requirements of Section
10 3509(m), which is what governs sort of procedures for materials
11 containing child sexual abuse materials. So we have not
12 explored whether there is any possibility of extracting files
13 or somehow treating subsets of that differently.

14 Our understanding, and this was the subject of some
15 litigation on the home computer before the Court previously, is
16 that, as a general matter, the unit is treated as a unit where
17 the child sexual abuse materials were found. So I think we are
18 working on making an image of the laptop available to defense
19 counsel to review, consistent with those procedures, but we
20 haven't had any discussions about whether there is a viable
21 way, consistent with those restrictions, to extract parts of
22 that data.

23 THE COURT: I would have thought at this point you
24 could have and should have had those discussions, but we will
25 discuss that in a moment.

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1 What about Mr. Schulte's claim that the discovery with
2 respect to the severed counts, the trial for next year, that
3 there is some portion of that that is not reviewable at the
4 MDC? I assume that includes the alleged child pornography,
5 which obviously, I presume, can't be reviewed at the MDC. But
6 I don't know if you know what else he is talking about or what
7 the issues are there.

8 MR. DENTON: I don't, your Honor. We have
9 communicated to defense counsel that if there are parts of that
10 discovery that they would like us to provide to Mr. Schulte on
11 CDs that can be made read only, which we understand CDs can be
12 used in the discovery machine at the MDC, that we are happy to
13 make those additional copies of what they identify and send
14 them. I don't know if there is some technical issue with
15 respect to the computer and particular types of files that Mr.
16 Schulte is referencing. That hasn't been raised with us
17 before.

18 THE COURT: Thank you.

19 Ms. Shroff, can you elaborate beyond what Mr. Denton
20 referred to as what are the materials that you sent to or
21 submitted to the MDC that have not made their way to Mr.
22 Schulte?

23 MS. SHROFF: Your Honor, when Mr. Schulte was first
24 arrested in federal court, he was arrested on the child
25 pornography charges. There was massive discovery on that case.

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1 The discovery was loaded onto external hard drives and provided
2 to him at the MDC. We did not load it; it was loaded by the
3 government. He has always had it.

4 Subsequent to a search warrant, there was a search
5 warrant to search his cell, and when his cell was searched they
6 took all of the hard drives. I have asked the government, I
7 think in an e-mail, that Mr. Schulte receive a copy of the hard
8 drives that were seized, unless, of course, they claim that
9 those hard drives also have some kind of prohibited material,
10 in which case they should tell us where the prohibited material
11 was found, what the log files are, so that we can move forward.

12 So the phrase used here a lot is "buckets of
13 information." So the one bucket is the stuff on the laptop.
14 The second bucket is the stuff seized from his cell. And then,
15 of course, the last is the contraband that they cannot give us
16 a copy of. But the hard drives that were seized from him, from
17 the MDC cell, if they don't have contraband, they should just
18 be returned to him. Or the government is going to have to put
19 them literally on thousands of CDs so that he can view it at
20 the MDC. Because it will literally take thousands of CDs to
21 put it on the CDs itself.

22 Just one last thing, and I know he is *pro se* on that
23 point, but I just want to go back to it because it's an issue
24 that keeps coming back up. The government says that they found
25 child porn on the laptop. We have asked them to simply give us

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1 the names of the log file. Mr. Schulte claims there isn't such
2 material. The government claims there is such material.

3 So to the extent, even if, as Mr. Denton has
4 repeatedly pointed out to us that it is not Rule 16 discovery,
5 and we understand that, to the extent Mr. Schulte's access to
6 the laptop was taken away based on that information or those
7 files, couldn't we just get the names of the log files so we
8 can figure out if in fact what Mr. Schulte claims is true?
9 It's part and parcel of the conversation that, if the Court
10 does have conversations with defendants, the colloquy between
11 the Court and Mr. Schulte now. Unless they are completely
12 wrong, he is not getting the laptop back. If they are
13 completely wrong and he has a shot at getting the laptop back,
14 could we simply get the log files, please?

15 I have explained to Mr. Schulte how Rule 16 works. I
16 really have tried. I promise you I have tried.

17 THE COURT: It may become Rule 16 material if the
18 government, upon concluding its investigations, determines that
19 it would use it against Mr. Schulte at trial. So in that
20 regard this issue may become moot.

21 MS. SHROFF: Right. But then we will be months into
22 more frustration for Mr. Schulte, who is sitting there thinking
23 there isn't such material on it and they took away my laptop
24 and my lawyer isn't doing anything.

25 THE COURT: I understand why this entire situation in

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1 the last five years is deeply frustrating to Mr. Schulte. But
2 having been convicted at the first trial, and given the
3 probable cause shown in the warrant, all I could say is right
4 now it certainly appears that Mr. Schulte has brought those
5 frustrations upon himself.

6 Having said that, first I want to ask the question to
7 you that I asked in the first instance, which is, are there
8 materials beyond what Mr. Denton said that were re-sent to Mr.
9 Schulte last week that you have tried to get to Mr. Schulte
10 that have not made their way to him?

11 MS. SHROFF: Yes, your Honor. The materials that Mr.
12 Denton and Mr. Lockard sent to us, which included the search
13 warrant and the affidavits underlying the search warrant, I
14 didn't send them to him, I physically put them in the legal
15 mailbox that is at the MDC twice. One time I mistakenly
16 printed it out on long legal paper, but I said, you know what,
17 he is just going to have to make do. He said he never got
18 them. I then printed out a second set. I took them up to Unit
19 84, showed them to him. When I went down, I put it back in the
20 legal mailbox. He still has not received them.

21 Part of the problem, your Honor, is that in Unit 84,
22 unlike MCC when we had legal visits on the SAMs unit, we are
23 not able to pass documents so somebody can read them. So there
24 is not even that option. So, yes, he has not received any of
25 the documents produced by the government to me which consists

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1 of the search warrant and the underlying affidavits.

2 THE COURT: Mr. Denton, the log file question or
3 request, even if as a technical legal matter you are not
4 obliged to disclose it, can you explain the government's view
5 on its willingness to disclose that information?

6 MR. DENTON: Your Honor, I think two things.

7 First of all, obviously the review is ongoing so we
8 are sort of reluctant to produce what essentially would be
9 almost like a bill of particulars related to the child sexual
10 abuse materials. But I think we are going to do one better.
11 As I said, we are going to make an image of the laptop
12 available to defense counsel to review at the FBI space at 290
13 Broadway so they will be able to see it for themselves.

14 THE COURT: When do you anticipate doing that?

15 MR. DENTON: I think defense counsel indicated that
16 they were available on Mondays in the morning. We were
17 planning to ask if we could do it next Monday. I don't know if
18 that would work, but that's how soon we expect it to be, as
19 soon as we can make schedules work for everyone involved.

20 THE COURT: Yes, Ms. Shroff.

21 MS. SHROFF: We still need the log file. There may be
22 child porn on the laptop. We still need to know the log file
23 names. I am assuming the government will give them to us if
24 they are willing to show us the images or the rest of the
25 material. But according to our expert, what is needed are the

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1 names of the log file.

2 THE DEFENDANT: I think she is meaning the actual file
3 name of the CP when she says log file; not the actual log file,
4 but the actual CP file name.

5 THE COURT: Understood.

6 Number one, I would think that if you're shown the
7 actual image, you would be privy to that information. Number
8 two, I would think if the government is willing to show you the
9 actual image, which presumably entails the file name, that the
10 government would be willing to provide that information to you.

11 There are two separate issues here. One is
12 discovery-type issues, or discovery issues and access issues
13 pertaining to Mr. Schulte's access to certain information and
14 resources in the jail. That's number one. The second is the
15 defendant's representation and trial date.

16 I am not hearing any application to change his
17 representation status as to the severed counts and trial. If
18 that changes, then I will entertain whatever application is
19 made, but it doesn't sound like there is any application being
20 made on that score.

21 It sounds to me like we are not in a position right
22 now to change the trial date. If circumstances change on that,
23 I would revisit it. I told you I was hoping to try it sooner
24 than September 11th of next year myself, but it sounded like
25 between the pretrial litigation that everybody contemplated

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1 here, including Classified Information Procedures Act issues,
2 including new motion practice, including the types of issues
3 that we are discussing here today, and also mindful of
4 counsel's trial schedules, that it wasn't really feasible to do
5 it any earlier than next September. If that has changed, I am
6 certainly willing to revisit it, but it doesn't sound like it
7 has particularly changed.

8 On the first set of issues, I would break that down
9 into two different categories. One is stuff that the defendant
10 has not been provided access to that he takes issue with. I
11 haven't heard anything on that list that I am inclined to
12 intervene or take steps about, but if there are concrete
13 requests, I am certainly willing to entertain them. The second
14 is just the mechanics of getting things to him and making sure
15 they do get to him, if they are things he is entitled to or the
16 government has no objection to him getting.

17 Here is what I propose. Number one, that the
18 government immediately contact the MDC and try and get to the
19 bottom of why there are things that have been sent to Mr.
20 Schulte by the government and by Ms. Shroff that have not yet
21 gotten there. I am going to do the same. There is a newly
22 appointed liaison person at the MDC, and I am happy to make
23 this one of the first items that he has to deal with and ensure
24 that he is familiar with the history and issues in this case
25 more generally. But the bottom line is I want to get to the

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1 bottom of that and ensure that going forward as well, that when
2 things are sent to Mr. Schulte that they actually arrive to Mr.
3 Schulte. I don't understand what the issue is there, but if we
4 can get to the bottom of that and address that problem, that
5 would be good for everyone.

6 Number two is, anything that has not yet been sent but
7 the defense would like, either through counsel or through Mr.
8 Schulte, I think you guys should confer and try and sort that
9 out. If it's as simple as arranging to see things on Monday,
10 then great, then there is no issue and no dispute. If there is
11 a dispute, I think what we should do here is adopt essentially
12 the rule that I have for my civil docket, which is you guys
13 have to meet and confer. If you fail to resolve it, either
14 side can file a letter not to exceed three pages raising what
15 the issue is and seeking whatever relief you think there is to
16 be sought. I should be clear, by letter motion, not just by
17 ordinary letter. The other side can respond within three
18 business days, and then I will resolve the issue promptly,
19 either by written order or by convening some sort of conference
20 like I did here. There are some practical issues here, and I
21 think that's the best way to work them through. For the most
22 part, you can and should be able to resolve them without the
23 need to come to me, but if there is a need to come to me, then
24 come to me.

25 Does that all make sense? Any issues, any objections,

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1 any questions, any concerns?

2 Mr. Denton.

3 MR. DENTON: Your Honor, I think the only thing I
4 would say is, with respect to anything pertaining to the Rule
5 29 or Rule 33 motion, we encountered some issues with standby
6 counsel objecting to us attempting to confer with Mr. Schulte,
7 as directed by the Court. So I think that works perfectly well
8 for anything relating to the pending charges, or any of the new
9 conduct for which Mr. Schulte is represented, but it may be a
10 little trickier if he has issues he wants to raise on the
11 pending motions.

12 THE COURT: Can you flesh that out a little bit, what
13 sorts of things that they object to discussing with you?

14 MR. DENTON: I think that's a question for Ms. Shroff,
15 your Honor. We set up a call with Mr. Schulte to confer about
16 the schedule for the motions and Ms. Shroff objected to us
17 having called without her physically with Mr. Schulte as
18 opposed to just participating on the line. As she has noted,
19 that's not possible to arrange at the MDC because of the setup
20 of the attorney-visitor room for the SAMs unit inmates. We are
21 happy to confer with him by phone with standby counsel on the
22 line, but to the extent that standby counsel is going to object
23 to that procedure, it's just tough for us to confer with him on
24 those issues.

25 THE COURT: Do you anticipate any need to confer with

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1 him at all? There is a schedule in place for those motions.
2 They are due December 16, and a briefing schedule thereafter.
3 Otherwise, it's just a question of getting things to him that
4 need to be gotten to him.

5 MR. DENTON: Agreed, your Honor, and we don't
6 anticipate the need. I am just flagging the issue that has
7 come up before.

8 THE COURT: Ms. Shroff.

9 MS. SHROFF: The issue did come up, your Honor. I did
10 object. The call was to be placed right after Mr. Schulte was
11 released from suicide watch, where he was put for six days
12 without notice from either the Bureau of Prisons or the United
13 States Attorney's Office, to his family, his counsel, or anyone
14 else. We hadn't seen Mr. Schulte after he had been released
15 from suicide watch. In the past, the government has recorded
16 what Mr. Schulte had said. We were concerned about a
17 spontaneous eruption by Mr. Schulte. And in light of the fact,
18 and in light of the fact that I was his counsel on the severed
19 counts, I did object. I offered to have Mr. Schulte brought to
20 the court. I offered to go to MDC and sit next to Mr. Schulte.

21 THE COURT: That ship has sailed. We are past that.

22 MS. SHROFF: Going forward, to the extent that the
23 government has anything to propose to Mr. Schulte, we will make
24 every effort to make sure his *pro se* voice is heard, of course.

25 THE COURT: What I am contemplating and foreseeing is

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1 just the need for a meet-and-confer with respect to any items
2 that Mr. Schulte needs, whether that is in connection with the
3 severed counts or with respect to the motions, and trying to
4 sort through those things together, without necessarily the
5 need to come to me, and coming to me if there is a need.

6 Can I task you with doing that even to the extent that
7 it pertains to Rule 29 and Rule 33 motions?

8 MS. SHROFF: Certainly, your Honor. We would be happy
9 to do that. We have sent the government as clear e-mails as
10 possible, including enumerating the separate issues we would
11 like resolved. I think it was on Saturday that Mr. Denton
12 replied, and I replied back to him on Saturday itself setting
13 up a date and time for which to review the material. I am
14 assuming that the government will make Mr. Schulte also present
15 for that review, and hopefully the review itself will be of
16 great assistance to Mr. Schulte to move things forward. I
17 think it will work out just fine.

18 THE COURT: But again, what I am saying is, we are not
19 dealing here with a situation where Mr. Schulte is appearing
20 before a jury and I would be treading on his right to represent
21 himself. I blessed his request to essentially complete his
22 self-representation with respect to the espionage and related
23 counts by filing the motions. No one is suggesting that
24 counsel take over that responsibility. What I am suggesting is
25 that counsel take responsibility for dealing with the logistics

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1 surrounding getting him whatever information and materials he
2 needs to prepare those motions. I don't think that that
3 meaningfully treads on his right to self-representation.
4 Counsel did that in advance of the last trial by facilitating
5 communications and transfer of information and materials as
6 well. So it's a similar role for that.

7 MS. SHROFF: It's totally fine, your Honor.

8 THE COURT: Great.

9 So given that, we will do what I suggested, which is
10 you guys should try and sort out as much of this as possible.
11 If there are concrete issues that remain in dispute, either
12 side can file a letter motion not to exceed three pages, the
13 other side has three business days in which to respond by
14 letter not to exceed three pages, and I will resolve the issue
15 either by written order or by convening some sort of
16 conference. But my sincere hope is that you guys can work
17 through these things as much as possible.

18 If there are meaningful disputes because the
19 government does not believe that Mr. Schulte is entitled to
20 something, or is not willing to give him access to something,
21 whether that is a resource for information or material, and the
22 defense believes otherwise, then great, bring it to my
23 attention and I will resolve those sorts of disputes. But I
24 think to the extent that these issues are as much logistics as
25 they are legal, the former can be resolved by you guys, perhaps

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1 with some assistance by me vis-a-vis the MDC, but that
2 shouldn't be taking everybody's time and attention.

3 Mr. Schulte, do you have something you wish to say?

4 THE DEFENDANT: Yes. With respect to this, if there
5 was any way to resolve a couple of these issues that didn't
6 seem to get all the way resolved. The first was the material
7 from the laptop or also the discovery drives that were recently
8 seized. So before I can even start on the Rule 29 motion, I
9 really need my -- I have a complete draft of it. So if there
10 is any way that they could organize something where me and
11 counsel meet, I can pull off files I want, give it to the wall
12 counsel for review to give to me. If there is some way that we
13 can do this. I know the government has said their position
14 seemed to be that I don't get access to any of this. This is
15 like hours of works, hundreds of pages.

16 THE COURT: You can talk to Ms. Shroff. Ms. Shroff or
17 Mr. De Castro -- I didn't mean to leave you out -- can discuss
18 with the government whether that is the prosecution team or the
19 wall team.

20 I would say, just to make it concrete, if you have a
21 draft of the motion, government, I think that's something that,
22 presumably in some form that assures you that there are no
23 security issues, I don't see any reason why Mr. Schulte
24 shouldn't be provided with his work product that facilitates
25 his drafting of the motions here. So if, hypothetically, there

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1 is a draft of the motion sitting on that laptop, I would think
2 that the wall team could obtain it and print it out and provide
3 a hard copy to Mr. Schulte. I am not proposing that he be
4 given a laptop with the actual electronic version. I am
5 proposing that it be given to him in some fashion that there is
6 no security issue. But I would think that that is the kind of
7 thing that can be worked out amongst yourselves, and I include
8 the wall team in that.

9 But, Mr. Schulte, if there is something like that, you
10 should discuss it with your standby counsel with respect to the
11 motions and they can facilitate your getting it within reason.
12 All right? If there is anything else of that nature, I would
13 say that's going to be my answer and you should start with them
14 and see if you can work it out, and I have already described
15 the means by which I will resolve any disputes.

16 Anything else you wish to say?

17 THE DEFENDANT: I guess the other thing was just in
18 response to when the government was talking about the ability
19 to review the exhibits, for example, Excel sheets. There are
20 some Excel documents that are in the discovery. I can't review
21 those at the MDC. There's other types of exhibits on there
22 that have large pictures in the PDFs. Those won't display. I
23 know I have a due date December 16. I haven't even been able
24 to, in any meaningful way, begin on that.

25 THE COURT: I would discuss those with your standby

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1 counsel for these purposes too, and if there is some way of
2 getting those materials to you, then so be it. I would say to
3 the extent that you have a full draft already done on the
4 computer, it's a little hard to see why you would need access
5 to an Excel file; or if there is particular data on an Excel
6 file, perhaps that can be provided to you in some other form or
7 fashion. So again, talk to them and see if you can sort those
8 things out.

9 Anything else?

10 THE DEFENDANT: The final thing was I wasn't clear
11 what the government's position was as far as, I had 20
12 terabytes of discovery produced on like five different drives
13 that were all seized. So is it the government's position that
14 they are not going to provide the discovery again?

15 THE COURT: I think we discussed this at the
16 conference a few months ago. I don't see any reason why the
17 discovery beyond what was admitted at trial would be relevant
18 to the Rule 29 --

19 MS. SHROFF: I'm sorry, your Honor. He is talking
20 about the discovery that was recently seized, which is for the
21 CP case.

22 Your Honor, if it's possible, we are all here, and I
23 don't want to impose on you, perhaps if we could have ten
24 minutes to meet and confer while the government is here on
25 those issues. Hopefully they will be resolved; and if not, we

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1 can use the procedure you have described and write to you and
2 use the three-day reply rule. That might help move matters
3 along rather than continue in this manner.

4 THE COURT: It's certainly fine by me. Everyone else
5 good with that?

6 Mr. Denton.

7 MR. DENTON: Sure, your Honor.

8 THE COURT: Great.

9 So why don't I get off the bench and I will leave you
10 guys to discuss for a few minutes. I will ask the marshals to
11 indulge that in the interest of a larger efficiency. And when
12 you're done we will let the marshals know.

13 Anything else we need to discuss today?

14 Mr. Denton.

15 MR. DENTON: The only thing I would note, your Honor,
16 Ms. Shroff made an allusion that Mr. Schulte is being produced
17 for this potential Monday review of the laptop. That is not
18 the case. That is something we told defense counsel can take
19 place for counsel at the FBI offices. For Mr. Schulte to be
20 able to review any of that, that is something that is going to
21 have to happen in the courthouse and the FBI and marshals are
22 discussing what the appropriate arrangements will be. We are
23 working on it and we will let defense counsel know once we have
24 got that sorted out.

25 THE COURT: Understood. And I would say that's in the

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1 bucket of things that you should discuss with one another, and
2 if there is any legal issue or dispute for me, you know how to
3 raise it.

4 Anything else from you, Ms. Shroff?

5 MS. SHROFF: No, your Honor. Thank you.

6 THE DEFENDANT: I have one last thing. The June 3rd
7 transcripts that were at the classified proceeding, I have been
8 trying to get the classification review and to get the
9 declassified portions of these. I know the Court set a
10 deadline for when it's supposed to be reviewed and it's well
11 past the deadline. So if there is any way I can get the
12 unclassified versions of those.

13 THE COURT: I will check with the SISO about it,
14 unless, Mr. Denton or Mr. Lockard, you have any information on
15 that score.

16 MR. DENTON: So, your Honor, I note that the various
17 transcripts that the Court had ordered be submitted for review
18 were submitted for review. I don't know what the status of
19 that is. I think we did flag at the time that there might be a
20 question about whether even the unclassified portions were
21 appropriately released. Given the sealing provisions under
22 CIPA, that might be something we have to address. But I know
23 at least the classification review has been submitted and
24 underway. I don't know where it is in the process.

25 THE COURT: Why don't you report back to me by the end

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1 of the week just telling me where that stands, and if there is
2 any impediment of them being released, what it is. Hopefully
3 we will get that done.

4 All right. Very good. I will leave you guys to try
5 and make profitable use of the next few minutes within reason.

6 And with that, we are adjourned.

7 Thank you very much.

8 (Adjourned)